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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER				
MRUK, BRIAN P				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,179

Applicant(s)

ITO ET AL.

Examiner

Brian P. Mruk

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office action is in response to Applicant's amendment filed January 2, 2008. Applicant has amended claims 1, 4-6, and 8-13. New claims 14-16 have been added. Currently, claims 1-16 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 20070926.
3. The rejection of claims 4-5 and 8-13 under 35 U.S.C. 112, second paragraph, is withdrawn in view of applicant's amendments and remarks.
4. The rejection of claims 1-13 under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Villard et al, WO 01/97772, is maintained for the reasons of record.
5. The rejection of claims 1-13 under 35 U.S.C. 103(a) as being unpatentable over Melby et al, U.S. Patent No. 6,066,315, is maintained for the reasons of record.

NEW GROUNDS OF REJECTION

Claim Rejections - 35 USC § 112

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the specification does not provide support for the term "non-crosslinked" that is recited in instant claims 1, 6, 14 and 16, and also, the specification does not provide support for the phrases "in the absence of a crosslinking monomer" and "wherein the copolymer is not an ampholyte copolymer" that are recited in instant claims 14 and 16.

It is noted by the examiner that any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. See *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977) ("[the] specification, having described the whole, necessarily described the part remaining."). See also *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Note that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of

descriptive support. Ex parte Parks, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993). **See MPEP 2173.05(i).**

Instant claims 2-5, 7-13 and 15 are rejected under 35 U.S.C. 112, first paragraph, for being dependent upon a claim with the above addressed 112 problem.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 14-16 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Villard et al, WO 01/97772.

Villard et al, WO 01/97772 (equivalent of Villard et al, US 2004/0028637), discloses a thickener for use in cosmetic detergents comprising 5-95 molar percent of a monomer performing a weak acid function, and 5-95 molar percent of at least one monomer performing a strong acid function (see abstract and page 3, lines 25-32). It is further taught by Villard et al that suitable strong acid monomers include 2-acrylamido-

2-methyl propane sulfonic acid, and that suitable weak acid monomers include acrylic acid (see page 7, line 25-page 8, line 13), per the requirements of the instant invention. Specifically, note Polymers P1-P6 on page 9, and Examples 1-6, which contain polymers of 2-acrylamido-2-methyl propane sulfonic acid and acrylic acid, citric acid, and adjunct ingredients. Although Villard et al is silent with respect to the molecular weight of their polymers, the examiner asserts that the polymers disclosed in Examples P1-P6 of Villard et al would inherently meet the molecular weight requirements of the instant invention, since the polymers disclosed in Examples P1-P6 of Villard et al contain all of the required monomer units in the amounts required in the instant claims, absent a showing otherwise. Therefore, instant claims 14-16 are anticipated by Villard et al, WO 01/97772.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

11. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melby et al, U.S. Patent No. 6,066,315.

Melby et al, U.S. Patent No. 6,066,315, discloses an ampholyte polymer for use in personal care detergents comprising 20-95 mole percent of MAPTAC or APTAC, 5-80 mole percent of 2-acrylamido-2-methyl propane sulfonic acid (i.e. AMPSA) and acrylic acid, an up to 20 mole percent of an acrylate monomer, wherein the polymer has a molecular weight of 10 million (see abstract and col. 4, line 60-col. 5, line 17). It is

further taught by Melby et al that the ampholyte polymer is present in the detergent composition in an amount of 0.01-20% (see col. 5, lines 11-16), and that the composition additionally contains citric acid (see col. 11, Shampoo Example #1), per the requirements of the instant invention. Specifically, note Examples 1-30. Although Melby et al generally discloses an ampholyte polymer that contains 5-80 mole percent of 2-acrylamido-2-methyl propane sulfonic acid and acrylic acid, the reference does not require such a composition containing this ampholyte polymer with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a detergent composition, as taught by Melby et al, which contained an ampholyte polymer comprising 5-80 mole percent of 2-acrylamido-2-methyl propane sulfonic acid and acrylic acid, because such detergent compositions fall within the scope of those taught by Melby et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a detergent composition containing an ampholyte polymer comprising 5-80 mole percent of 2-acrylamido-2-methyl propane sulfonic acid and acrylic acid is expressly suggested by the Melby et al disclosure and therefore is an obvious formulation.

Response to Arguments

12. Applicant's arguments filed January 2, 2008 have been fully considered but they are not persuasive.

Applicant argues Villard et al, WO 01/97772 (equivalent of Villard et al, US 2004/0028637), requires a cross-linking agent in their copolymer, which is excluded

from the instant claims. However, the examiner respectfully disagrees. Specifically, the examiner asserts that Villard et al discloses that a preferred copolymer contains a branching or cross-linking agent (see paragraph 31 of Villard et al, US 2004/0028637), and also asserts that claim 1 of Villard et al does not require a cross-linking agent. Therefore, it is the examiner's position that Villard et al clearly discloses polymers that are not cross-linked, and copolymers that are cross-linked. Accordingly, since Villard et al clearly discloses polymers that are not cross-linked, the examiner maintains that instant claims 1-16 are anticipated by or, in the alternative, obvious over Villard et al, WO 01/97772.

Applicant argues that Melby et al, U.S. Patent No. 6,066,315, requires an ammonium ion residue in their copolymer, which is not required in the instant claims. Although the examiner agrees with applicant on this point, the examiner respectfully asserts that the instant claim, as presently written, contain the claim language "a monomer mixtures which comprises", which means that the copolymer is open to contain additional monomer units, such as an ammonium ion residue. See MPEP 2111.03. Applicant further argues that the compositions disclosed in Melby et al are necessarily near neutral, whereas the instant claims are acidic or strongly acidic. However, the examiner respectfully disagrees. Specifically, Melby et al clearly discloses that their compositions have a pH of 3 (see col. 10, lines 33-36 of Melby et al), which meets the pH requirements of the instant claims.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brian P Mruk/
Primary Examiner, Art Unit 1796

Brian P Mruk
March 17, 2008

Brian P Mruk
Primary Examiner
Art Unit 1796